

REMARKS

Undersigned counsel for Applicants sincerely thanks Examiner Mayes for extending the courtesy of a personal interview held on January 19, 2006 to discuss the outstanding Office Action and the contents of this Response. More specifically, USP No. 5,300,181 to Yamaguchi was discussed with respect to an alleged label applicator head having an angled surface.

Status of the Claims

Claims 1-8, 10-15, 17-20, 22-31 and 33-36 were pending in this application. Claims 1, 17 and 23 have been amended; no claims have been canceled or newly added. Upon entry of these amendments, therefore, claims 1-8, 10-15, 17-20, 22-31 and 33-36 will remain pending and under active consideration.

Applicants respectfully request entry of the amendments and remarks made herein into the prosecution history of the present invention. Reconsideration and withdrawal of the rejections set forth in the above-identified Office Action is respectfully requested.

Support for Claim Amendments

The independent claims 1, 17 and 23 have been amended to recite, in part, an applicator head having “a face to receive the label and two angled surfaces, the surfaces joining at an angle from a midpoint of a said face of the applicator head.” Support for this amendment may be found, at least, in the Summary of the Invention; paragraph [0039]; original claims 16, 21 and 32; and Figures 10 and 11 of the published application.

Claim Rejections under 35 U.S.C. § 112, second paragraph

Claims 1, 17 and 23 stand rejected under 35 U.S.C. § 112, second paragraph, for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner asserts that “two angled surfaces” does not clearly identify from what the surfaces are angled, and suggests that “[a]ccording to the specification [0039] and Figures, the two angled surfaces are angled with respect to the plane from the center (midpoint) of the receiving face of the applicator head.” Applicants respectfully traverse this rejection.

Traversal is based on the understanding that claims are viewed in light of the specification and figures, which make clear the planes from which the surfaces are angled. However, while not acquiescing to the propriety of the rejection, Applicants have amended the claims in keeping with the Examiner’s suggestion so to speed prosecution of the instant application. The claims now recite, in relevant part, an applicator head having “a face to receive the label and two angled surfaces, the surfaces joining at an *angle from a midpoint* of said face of the applicator head.”

In light of this amendment, Applicants submit respectfully that the pending claims have overcome the 35 U.S.C. § 112, second paragraph, rejections. Accordingly, Applicants hereby kindly solicit withdrawal of same rejections.

Claim Rejections under 35 U.S.C. § 103

All of the claims stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the stated combinations of USP No. 6,199,614 (“Snyder”) in view of USP Nos. 6,024,149 (“Bernhard”); 3,436,294 (“Marano”); 3,682,743 (“Cleary”); 6,220,330 (“O’Brien”); 5,853,530 (“Allen”); and/or 5,300,181 (“Yamaguchi”) for the reasons stated in items (6)-(9) of the Office Action. Applicants respectfully traverse this rejection.

In order to properly establish a *prima facie* case of obviousness, each and every element of the claimed invention must be found in one or more of the combined references. With respect to the instant rejections, even assuming that the combination of the references were proper, Applicants submit that each limitation of the claimed invention cannot be found in any of the cited art, alone or in combination. Specifically, the cited art provides no teaching or suggestion of an applicator system comprising an applicator head having a face to receive the label and two angled surfaces, the surfaces joining at an angle from a midpoint of a said face of the applicator head. Therefore, a proper rejection under § 103 cannot be properly sustained.

The Examiner alleges that “Yamaguchi shows in Figure 2 that the suction plate of a label applicator for holding a label has an angled receiving face in which two surfaces are angled from a horizontal plane and angled from the center of the suction plate.” Applicants respectfully disagree with this interpretation of the Figure. Applicants respectfully submit that Figure 2 more accurately depicts a label 28 that is angled, *not* the suction plate 36.

The Examiner’s reading of Figure 2 rest entirely with the figure alone and cannot be reconciled with the description and operation of the invention. In fact, Yamaguchi says little about the suction plate 36, the entirety of which is recited here:

[A] suction plate 36 is provided. The suction plate 36 is fixed to the underside of a suction box 28 made from a material which is substantially impermeable. A plurality of suction holes 40 are formed to the suction plate 36.

No mention is made with respect to a “bevel” or “angle” anywhere in the specification. No mention is made regarding the functionality, if any, of the surface of the suction plate other than to presumably hold a label prior to its application. Thus, Applicants respectfully submit that, at the very least, the Examiner’s notion of a novel, angled applicator head in Yamaguchi is not supported by a single word dedicated to this notion.

Applicants respectfully note that when applying 35 U.S.C. § 103, the M.P.E.P. at 2141.01 provides that one of the tenets of patent law that must be adhered to is that “[t]he references must be viewed *without the benefit of impermissible hindsight* vision afforded by the claimed invention.” (Emphasis added.) “The claimed invention must be considered as a whole.” *Id.* In other words, here, it would be improper to view any of the Figures, lacking any other support, with the benefit of the vision afforded by the disclosure of applicator heads having an angled surface.

In fact, Applicants maintain that Figure 2, when properly viewed in light of Yamaguchi, as a whole, cannot depict an applicator head comprising an angle for the following reasons. First, as noted, the specification is silent with respect to an “angled” applicator head. Coupled with the fact that a search of the prior art failed to uncover a single description of an applicator head with an angle thereon, it is implausible to suggest that Yamaguchi would fail to draft a single sentence to an otherwise distinguishing feature of their applicator. Rather, the silence suggests that there was nothing unique about the suction plate of Yamaguchi; that is, the suction plate was and is flat like every other applicator head heretofore known in the art.

Second, the side views of every embodiment depicted show a *flat* suction plate. *See* Figures, 1, 5, 7 and 9. What is more, even the *front* view of the embodiment depicted in Figure 10 is unequivocally *flat*. The Examiner has suggested the possibility that Figure 10 provides for a unique embodiment, one with a flat suction plate, while the other depicted embodiments are provided with an angled suction plate. The Examiner must concede, however, that such an interpretation is without support from the specification. Yamaguchi does not distinguish the embodiments based on the suction plates. The “holding members,” the “pressing devices,” or the “label issuing device” distinguish the respective embodiments. Col. 6, lines 42-45; col. 7, lines 23-25; and col. 8, lines 14-16, respectively. Any other interpretation, Applicants submit respectfully, would amount to an improper use of “hindsight vision” and fails to appreciate the invention “as a whole.”

Third, Yamaguchi explicitly describes the relation of the pressing rods “52” to the label surface: “In [the Figure 2] embodiment [the axis of the pressing rod] is substantially *perpendicular* to the surface of the label 28.” Col. 4, lines 44-46 (emphasis added). Applicants respectfully submit that this statement of the invention is consistent with the operation of the invention. Yamaguchi provides an apparatus that physically presses a label onto a surface. In order to account for uneven surfaces, the Yamaguchi apparatus comprises a *plurality* of pressing members that are each made of a soft material, which deforms to accommodate the unevenness in the surface. *See, e.g.*, col. 2, lines 35-37. Thus, Applicants respectfully submit that an applicator with an angled surface, as the Examiner suggests, would, at best, interfere with the ability of the pressing members to properly deform about an uneven surface in applying a label thereon.

Hence, viewed in light of the disclosure as a whole, the angled label of Figure 2 cannot and would not properly be interpreted by one of ordinary skill in the art to reflect an angled suction plate. Applicants respectfully submit that the angled label depicted in Figure 2 more accurately reflects an artist’s rendition of a label bending as a consequence of the center pressing member being depressed ahead (*i.e.*, further down from) the neighboring pressing members.

For at least these reasons, Applicants respectfully submit that the claims, as amended, are not rendered obvious by any of the cited art. Accordingly, Applicants respectfully request withdrawal of same rejections.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to

Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date: March 8, 2006

By

A handwritten signature in dark ink, appearing to read 'Sunit Talapatra', written over a horizontal line.

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